

BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19

In the matter of	)	
	)	
TEGNA, INC., D/B/A KGW-TV,	)	No. 19-CA-148474
	)	
Respondent,	)	CHARGING PARTY IBEW LOCAL 48's
	)	RESPONSE TO RESPONDENT TEGNA'S
and	)	MOTION TO REOPEN THE RECORD
	)	
INTERNATIONAL BROTHERHOOD OF	)	
ELECTRICAL WORKERS, LOCAL 48,	)	
AFL-CIO,	)	
	)	
Charging Party.	)	

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RESPONSE TO MOTION TO REOPEN THE RECORD

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## I. Introduction

This matter involves an unfair labor practice (ULP) charge stemming from Respondent Tegna, Inc.'s (d/b/a KGW-TV) (hereinafter "KGW") failure to provide information during negotiations for a successor Collective Bargaining Agreement ("CBA") with the International Brotherhood of Electrical Workers, Local 48 (hereinafter "Local 48"). The Union's arguments regarding the necessity of the information and the subsequent ULP charge have been fully briefed to the Administrative Law Judge (ALJ) and the parties are awaiting a decision.

The parties continued to negotiate while waiting for the ALJ's decision. During the last day of negotiations, during which KGW inquired about a clause in Local 48's most recent Counter-Proposal, in which Local 48 retained the right to alter its proposal in response to any information gained through the ALJ's decision. This prompted KGW to ask if Local 48 intended to use this disclaimer to back out of a signed CBA if the parties were able to reach an agreement. Local 48 indicated that the ability to use this clause would "go away" if a deal was made and that it would honor the terms of the new CBA. It did not however, agree to withdrawal the charge, which is evidenced by the fact that such an agreement was not reduced to writing, unlike everything else discussed that day. There is no non-Board resolution of the ULP according to Local 48.

Furthermore, the information requested is still pertinent to Local 48 even though a successor CBA has been finalized. The information request was made in response to KGW's insistence in being given what it has labeled "non-exclusive jurisdiction," which is a radical departure from the traditional defined scope of work that has been in existence at KGW for decades. The new CBA contains within it limitations on how the non-exclusive jurisdiction can be used and procedures for making determinations as to when a non-bargaining unit member should be required to join the Local 48 bargaining unit

1 because of the nature of the work being performed. Because KGW was not forthcoming at  
2 the table about its need for this gutting of Local 48's jurisdiction, nor its intentions  
3 regarding utilization of the non-exclusive jurisdiction, Local 48 seeks to better understand  
4 how it will enforce the new CBA through the information that may be obtained through  
5 the information request.

6 Because Local 48 did not agree to withdrawal the charge, only to honor whatever deal  
7 was reached at the table, and because the information gained is still needed in order to  
8 navigate the uncharted territory of non-exclusive jurisdiction to best represent the  
9 bargaining unit members at KGW, Local 48 requests that the ALJ issue a decision on the  
10 ULP charge, and, if appropriate, order KGW to provide the information requested.

## 11 **II. Background**

12 The facts regarding Local 48's request for information and the subsequent refusal to  
13 provide the requested information, or to even bargain regarding confidentiality for those  
14 requests that KGW claimed were confidential in nature were fully briefed in the post-  
15 hearing brief from Counsel for the General Counsel. Only the information necessary to  
16 respond to the Motion to Reopen the Record are provided here.

17 Local 48 represents the Broadcast Operators, Directors, and Maintenance Technicians  
18 at the television station owned by Tegna, Inc. known as KGW-TV. The parties began  
19 negotiating for a new contract in June of 2014, and the first proposal brought to the table  
20 by KGW was for non-exclusive jurisdiction. This language would, if accepted, eliminate  
21 the jurisdiction of the Local 48 bargaining unit members by making it possible for anyone,  
22 even those not represented by any Union at all, to perform work that had traditionally been  
23 theirs.

24 KGW stated that it wanted this language so it could gain access to more content for  
25 broadcast and therefore be more competitive in the marketplace. This was perplexing to  
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1 Local 48 and the bargaining unit members because Broadcast Operators, Directors, and  
2 Maintenance Technicians are not typically involved in the selection of content or the  
3 gathering of content; the bargaining unit members traditionally are involved in the various  
4 stages of the transmission of content. When pressed as to why KGW needed this  
5 concession from a unit typically not engaged in content-gathering, KGW did not provide  
6 any clear answers.

7 Furthermore, when asked exactly what it planned to do with this non-exclusive  
8 jurisdictional language if Local 48 agreed to it, KGW could not provide any concrete  
9 responses but instead made vague references to wanting Management to have greater  
10 flexibility in the assignment of work. So in order to better understand why KGW claimed  
11 it needed this significant language concession and what its plans were for the future, Local  
12 48 made multiple information requests, most of which went unanswered. KGW continued  
13 to insist on this language though multiple bargaining sessions and declined to have any  
14 substantive conversation about any other issues of concern for the Union until the non-  
15 exclusive jurisdiction language was addressed.

16 Because of the lack of answers on such a significant matter, Local 48 reached out to  
17 the NLRB, which filed a complaint regarding KGW's failure to respond to the information  
18 requests. The parties met for a 3-day hearing starting on March 8, 2016, and a decision is  
19 still pending.

20 Negotiations continued, which is not indicative of a lack of need for the requested  
21 information of the part of Local 48, but rather demonstrates Local 48's desire to act in  
22 good faith and in accordance with its obligations. Local 48's goal in all of this has been to  
23 represent its members, and those members experienced wage freezes and some even wage  
24 reductions several years ago with no increases in compensation since. Additionally,  
25 automation and consolidation of certain Local 48 bargaining unit work was an on-going  
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1 issue and proceeding with negotiations was necessary to best represent the interests of the  
2 bargaining unit members.

3 On August 24<sup>th</sup>, KGW returned from reviewing Local 48's "Response to Company's  
4 Second Amended Comprehensive Proposal for a New Contract," which contained the  
5 following language:

6 The Union reserves the right to add to this Counter-Proposal, as well as modify  
7 and/or withdrawal this Counter-Proposal in whole or in part at any time; even if  
8 portions have been tentatively agreed to. This right is based on the understanding  
9 that both parties recognize the need for a mutually acceptable total package to move  
10 forward with presenting a successor contract to the membership. The Union may  
11 also make additions, modifications, and withdrawals, in whole or in part, in  
12 response to any and all information that may be obtained through the  
13 Administrative Law Judge's decision regarding the Union's information  
14 request/Unfair Labor Practice charge.

15 Winther Decl. ¶ 3, Ex. A. KGW's bargaining representative asked Local 48's bargaining  
16 representative if Local 48 intended to use this language to avoid or otherwise alter a  
17 completed successor CBA if the parties were able to reach one. The Local 48  
18 representative responded that she understood that Local 48's ability to use this clause  
19 would "go away" once a deal was made. The conversation was very brief and at no point  
20 did the representative from KGW ask directly if Local 48 would withdrawal the charge. At  
21 no point did KGW include its interpretation of Local 48's agreement to withdrawal the  
22 charge in either its subsequent proposal or the Tentative Agreement, both drafted by  
23 KGW. This is despite the fact that all other resolutions to issues were reduced to written  
24 form during negotiations. Winther Decl. ¶ 4-5, Ex. A, Ex. B. Both parties were  
25 represented at the table by attorneys who are sophisticated enough to recognize the need to  
26 take any substantial bargains made and reduce them to written form to ensure mutual  
understanding and agreement. It is apparent that there was, at best, a misunderstanding.

After additional back and forth regarding such issues as wage increases and signing

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bonuses, the parties reached a tentative agreement the evening of August 24, 2016. Ex. B. Local 48 presented the tentative agreement to the bargaining unit members for a vote and the members ratified it on August 28, 2016. The final CBA was signed on September 8, 2016. Ex. C. No further mention was made regarding the ULP until after signatures were gathered; only then did it become apparent that KGW and Local 48 were at odds regarding what happened at the table on August 24, 2016. Winther Decl. ¶ 6, Ex. D.

### III. Argument and Authority

#### A. The ALJ Should Make A Determination as to Whether or Not KGW Violated the Act

In situations where the parties have negotiated a non-Board settlement, Board law dictates that a four-factor test be used to determine if the settlement should be approved. *Independent Stave Co.*, 287 NLRB 740, 742 (1987). The first of those four factors is whether or not the parties agreed to be bound by the settlement. *Id.* This is a test as to whether or not the Board should accept a settlement, not whether or not a settlement itself was reached. In *Independent Stave Co.*, the settlement was approved by the members affected and also by the Union; it is the Regional Director that refused to approve the withdrawal request. *Id.* at 741.

In the situation at hand, there was no withdrawal request made by Local 48; instead there is a discrepancy as to whether or not such an agreement to be bound was made at all. As indicated by the fact that all resolutions to other significant issues were reduced to writing, the idea that such a concession was made by Local 48 and not reduced to writing is indicative of a lack of agreement to be bound, especially a concession that is of apparent value to KGW. As an illustration of how untrusting of each other the parties were at the table, Local 48 insisted that KGW reduce its intentions regarding part-timer employees to writing, as seen in Side Letter 4 in the new CBA. Ex. D. It was in KGW's ability to add

1 this to its subsequent proposal and the Tentative Agreement, and it did not do so.

2 In a situation where a non-Board negotiated settlement is absent, Board law indicates  
3 that a merit decision be made as to whether or not the Act was violated, apart from the  
4 remedy provided. Such was the case in *Borgess Medical Center*, in which the Board stated  
5 that the existence of a violation “is to be determined by the facts as they existed at the time  
6 of the union request” 342 NLRB 1105, 1107 (2004). The Board found that such a  
7 violation occurred, but declined to provide the remedy in the form of an order to provide  
8 the information requested because the information was no longer necessary (“the *remedy*  
9 for that violation must take into account the facts as they exist at the time of the Board’s  
10 order”) (emphasis in original) (*Id.*). The justification for why the information was no  
11 longer necessary in *Borgess Medical Center* is distinguishable from the situation at hand  
12 and is addressed in the next section.

13 There is a dispute as to whether or not there was an agreement between the parties to  
14 be bound to a non-Board settlement of the ULP, and without that agreement the four-  
15 factor test from *Independent Stave Co.* as to whether the Board should approve a  
16 settlement does not apply. Therefore the ALJ should make a determination as to whether  
17 or not KGW violated the Act in its refusal to provide information Local 48 believed was  
18 necessary to effectively negotiate a successor CBA. This determination is separate from  
19 the determination as to what is the appropriate remedy, which is addressed in the next  
20 section.

21  
22 **B. The Information Request is Not Moot Because of the Rights Provided to Local  
48 in the New CBA**

23 Apart from the determination as to whether or not KGW violated the Act in not  
24 providing the requested information to Local 48 in conjunction with successor CBA  
25 negotiations is the issue as to whether or not information provided now – post-signing of a  
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1 new CBA – is an appropriate remedy. KGW contends that Local 48 has no need for the  
2 information requested because negotiations are concluded, and it carries the burden of  
3 proving that the Union no longer has a need for the information. *Borgess Medical Center*  
4 at 1107. But this argument overlooks the rights that Local 48 has stemming from the  
5 newly-signed CBA and its need to assist its bargaining unit in navigating what is new and  
6 frankly frightening territory for the bargaining unit members, who are worried about hour  
7 reductions, total job loss, and the quality of programming provided since they take great  
8 pride in their work. Ex. C.

9 The new CBA provides for a process in which Local 48 can challenge whether or not a  
10 KGW employee should be made a member of the Local 48 bargaining unit. Ex. C. Local  
11 48 believes that information on why KGW needs non-exclusive jurisdiction and how  
12 KGW anticipates using it, since it refused to share those plans at the table, would be  
13 beneficial in making the necessary arguments under the CBA's procedure if and more  
14 likely when Local 48 is compelled to challenge the exclusion of an employee from the  
15 bargaining unit. Furthermore, Local 48 remains perplexed as to why language designed to  
16 generate greater access to content is relevant to a bargaining unit whose purpose is to  
17 transmit content, and Local 48 hopes that the information requested will make this more  
18 clear as it considers how to move forward under the new CBA, as well as during the  
19 negotiations that will be necessary in three years.

20 These circumstances make the current ULP charge distinguishable from situation the  
21 circumstances around *Borgess Medical Center*, in which the information requested was  
22 related to a grievance. 342 NLRB at 1105. Because the grievance decision was made  
23 before the Board decision was made, and that grievance decision was not appealed, the  
24 Union had no justifiable reason to need the information. *Id.* at 1106. Local 48 has an on-  
25 going interest in protecting its rights under the CBA and in understanding KGW's

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1 intentions, which it declined to share during negotiations despite repeated questions from  
2 Local 48. Therefore the information that a remedy in the ALJ's decision could provide  
3 would go a long way in equaling the playing field for Local 48 in addressing the  
4 anticipated issues surrounding non-exclusive jurisdiction.

5 In the case cited by Respondent Tegna in its Motion to Reopen the Record as to the  
6 appropriateness of the remedy, *The Boeing Co. & Soc'y of Prof'l Eng'g Employees in*  
7 *Aerospace*, the circumstances are much more similar to those in the present situation. 364  
8 NLRB No. 24 (2016). By the time the Board issued a decision in this case, the parties had  
9 already executed a CBA. *Id.* This obviously did not prevent the Board from making a  
10 determination as to the ULP, and furthermore the Board provided an amended remedy that  
11 ordered the Respondent employer to produce the requested information unless it could  
12 establish that the Union had no need for it. *Id.* at 4. This case therefore does not support  
13 the argument that the ALJ should not make a determination, and instead clarifies that the  
14 burden to prove that the information is no longer necessary squarely on the shoulders of  
15 KGW. The fact that negotiations have ended, on its own, does not prove that the  
16 information is inherently no longer necessary. And because KGW overlooked the need for  
17 Local 48 to understand non-exclusive jurisdiction, including how it will be applied to  
18 Local 48's bargaining unit members, KGW has failed to meet its burden of showing that  
19 the information request is moot and no longer necessary.

#### 20 **IV. Conclusion**

21 Because the parties did not mutually agree that Local 48 would withdrawal the ULP  
22 and because there are valid, on-going reasons as to why Local 48 still needs the  
23 information that was appropriately requested during negotiations to enforce the newly-  
24 signed CBA, Local 48 requests that the ALJ issue a determination as to the ULP and, if  
25 appropriate, order KGW to provide the requested information.

1 DATED this 28<sup>th</sup> day of September, 2016.

2  
3 s/Diana Winther

4 DIANA WINTHER, OSB #151627

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6 International Brotherhood of Electrical Workers,  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this day I caused to be served via e-mail a copy of the foregoing motion  
3 upon the following:

4 Division of Judges  
5 National Labor Relations Board- Region 20  
6 901 Market Street, Suite 400  
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8 **Via NLRB E-Filing System**

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23 DATED this 28<sup>th</sup> day of September, 2016.

24 /s/ Diana Winther

25 \_\_\_\_\_  
26 Diana Winther  
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